

## REMARKS

Reconsideration of the above-identified patent application in view of the amendments above and the remarks following is respectfully requested.

Claims 11-23 are pending in the application. In the Office Action dated November 15, 2006, the Examiner has rejected all claims. The Examiner's rejection is respectfully traversed. However, in order to more clearly define and distinguish the invention over the prior art cited by the Examiner, Applicant has chosen to amend claims 1-3, 4, 6, 10, 13, 14 and 18 and to cancel claim 12. Independent claims 1 and 10 have been amended to essentially include some or all the limitations of, respectively, claims 2 and 12. The words "by level" have been added to independent claim 18 to indicate the spatial arrangement of similar carbohydrate content foods.

Independent claim 1 now recites the key inventive feature of a portable kit that includes a plurality of foods with a predetermined total carbohydrate content organized in levels, each level including foods of substantially similar carbohydrate content. Independent claim 10 now recites the key inventive feature of providing a portable kit configured to carry food containers arranged in levels, each level including foods with a substantially similar carbohydrate content. Claims 2, 3, 4, 6, 13 and 14 have been amended to fit the amended language of their respective independent claims and any intervening dependent claim.

### § 112 Rejections

Claims 1-23 have been rejected under 35 U.S.C. 112, second paragraph, as being indefinite for failing to particularly point out and distinctly claim the subject matter which applicant regards as the invention. In particular, the Examiner has objected to the use of the terms "optimal" in claims 1 and 10, the use of "known" in claims 1 and 18 and the use of "maximal" and "minimal" in claim 3. Applicant has removed these terms from the indicated claims, as well as removing the term "optimal" from claim 6, and submits that the amended language is now acceptable.

### **§ 102 Rejections**

The Examiner has rejected claims 1 and 2 under § 35 U.S.C. 102(b) as being anticipated by Slack (US 5,711,164). With this Response, Applicant has amended claim 1 by essentially incorporating in it some of the limitations of claim 3. Since claim 3 has not been found by the Examiner to be anticipated by Slack, Applicant submits that the rejection of original claim 1 is now moot. Applicant further submits that amended claim 2, which depends from claim 1, is now similarly not anticipated by Slack. Moreover, claims 1 and 2 are not even rendered obvious by Slack.

### **§ 103(a) Rejections**

The Examiner has rejected claims 1-23 under 35 U.S.C. § 103(a) as being unpatentable over Bangs et al (US 6,039,989). The Examiner's rejection is respectfully traversed.

As stated in MPEP 2143.03:

*To establish prima facie obviousness of a claimed invention, all the claim limitations must be taught or suggested by the prior art. In re Royka, 490 F.2d 981, 180 USPQ 580 (CCPA 1974).*

The present invention is of a dieting system and method based on controlled carbohydrate intake. The invention discloses a portable kit that includes a plurality of foods with a known (predetermined) total carbohydrate content (referred to as "required daily content", p. 2, col. 1, line 6 of published US Application 2005/0118233) arranged in an asymmetric spatial arrangement. The spatial arrangement preferably includes a plurality of containers holding the foods and organized such that similar carbohydrate content foods are stored by groups (also referred to as "levels"), from a group of largest number of container with substantially carbohydrate free foods to preferably a single container with a carbohydrate rich food. The kit allows a user to have a varied diet, while making sure that the total carbohydrate daily intake is kept under a required limit (p. 2, col. 1, lines 18-21).

In contrast, Bangs et al. disclose a pre-packaged therapeutic meal for treatment of diet-responsive conditions. A meal may include a plurality of separate meal components or pre-packaged individual meals. At least one of the meal components

contains a predetermined level of nutritional enhancement, selected from the group of meats baked goods, sauces, starch sources, cereals, soups, desserts and fruit juice beverages. Throughout the description, the emphasis is on the composition of the meals in terms of nutrition value and nutritional enhancements. Bangs et al mention a "kit" only in the sense of a "survival kit", which is defined (col. 8, lines 40-43) as a kit that "includes information and food products that enable the patient to stay within the guidelines of the dietary health management system when traveling or when meal components of the system are otherwise unavailable". The subject of carbohydrate content is completely marginal, since Bangs et al base their pre-packaged therapeutic meal and treatment on total daily caloric intake and nutritional enhancements (col. 6, lines 48-59, col. 7, lines 19-26, lines 33-39, lines 49-53, etc) not on controlled carbohydrate intake. In Bangs et al there is absolutely no mention or even a hint of a spatial arrangement of foods in a portable kit according to carbohydrate content.

With regards to original claims 2 and 12, which limitations thereof are now included in amended independent claims 1 and 10, the Examiner states that Bangs et al disclose prepackaged individual meals included within a group (Col. 7, lines 8-10). In the cited paragraph, "group" is used with reference to the type of meal: breakfast, lunch and dinner. "Group" is further used in Bangs et al in the context of "meal groups" (FIG. 1), with examples being "dairy product group" (col. 11, line 7), "fruit group" (col. 7, line 10) and "vegetable group" (col. 7, line 18).

Applicant respectfully submits that the Examiner has basically misinterpreted terms such as "kit" and "group" in Bangs et al as representing limitations in the claims of the present invention. Applicant further submits that the term "group" in Bangs et al does not refer to, or even remotely implies a "level" in a spatial arrangement of any type of food. *Mutatis mutandis*, "group" in Bangs et al does not refer to or even remotely implies spatial arrangement of foods stacked in levels according to their carbohydrate content, as recited in independent claims 1 and 10 of the present invention.

The Examiner acknowledges that Bangs et al is silent about shape, configuration and portability of device/kit/apparatus for storing plurality of foods, about stacking foods in levels, and about using cooling packs. However, it is exactly the shape and configuration of the portable kit and the stacking of foods in levels that are the essential inventive features of the independent claims of the present invention.

The configuration and shape enable the stacking of foods by levels of substantially similar carbohydrate content. This arrangement provides an inherent, unique and substantive advantage to a person seeking to hold to a diet regimen that leads to permanent weight loss. The configuration is significant and not a matter of choice, in contrast with the Examiner's assertion. Any configuration that does not stack foods by levels of substantially similar carbohydrate content would directly contradict the purposes of the present invention, and would lead to totally undesirable results in terms of the diet regimen.

The Examiner further suggests that the claims reciting "cooling packs" (e.g. claims 5 and 13) are rendered obvious by the combination of Slack with Bangs et al. Applicant respectfully disagrees.

As stated in the MPEP, page 2100-128:

*To establish a prima facie case of obviousness, three basic criteria must be met. First, there must be some suggestion or motivation, either in the references themselves or in the knowledge generally available to one of ordinary skill in the art, to modify the reference or to combine reference teachings. Second, there must be a reasonable expectation of success. Finally, the prior art reference...must teach or suggest all the claim limitations. The teaching or suggestion to make the claimed combination and the reasonable expectation of success must both be found in the prior art, and not based on applicant's disclosure. In re Vaeck, 947 F.2d 488, 20 USPQ2d 1438 (Fed. Cir. 1991).*

And on page 2100-131:

*The mere fact that references can be combined or modified does not render the resultant combination obvious unless the prior art also suggests the desirability of the combination. In re Mills, 916 F.2d 680, 16 USPQ2d 1430 (Fed. Cir. 1990).*

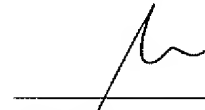
The limitation of cooling packs in claims 5 and 13 is applied to a respective independent claim that Applicant submits is not rendered unpatentable by Bangs et al. Bangs et al disclose a survival kit that includes information and food products that enable the patient to stay within the guidelines of the dietary health management system when traveling or when meal components of the system are otherwise unavailable. Bangs et al fail to teach a portable kit with a spatial arrangement of foods by levels having substantially similar carbohydrate content. The combination of

Bangs et al and Slack would certainly not succeed in obtaining a cooled portable kit with a spatial arrangement of foods by levels having substantially similar carbohydrate content.

In summary, Applicant respectfully submits that Bangs fails to teach the limitations in independent claims 1, 10 and 18, and therefore in all of their corresponding dependent claims.

In view of the above amendments and remarks it is respectfully submitted that claims 1-11 and 13-23 are in condition for allowance. Prompt notice of allowance is respectfully and earnestly solicited.

Respectfully submitted,

---

Mark M. Friedman  
Attorney for Applicant  
Registration No. 33,883

Date: February 11, 2007